

**REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

**1.131 AFFIDAVIT**

Applicant hereby petitions for a review the denial of Applicant's petition to swear behind the Berry reference. The Examiner opines that there is no establishment of the effective date of any drawings or photographs, i.e., dated drawings, dated photographs, dated notes, or the like.

It is respectfully submitted that the drawings, photographs, notes, need not be dated and there is no requirement that they be dated. It is respectfully submitted that affidavit testimony alone is sufficient to testify swear back of a reference under the provisions 35 CFR 1.131. It is acknowledged that a general allegation in and of itself that the invention was completed prior to the date of the reference is not sufficient, however, in the instant case, Applicant has filed numerous exhibits clearly establishing that the invention was completed prior to the effective date of the Berry Patent No. US 6,505,707 B1. In fact, not only is it not necessary that drawings, sketches and photos be dated, but, it is respectfully submitted that affidavit testimony alone is sufficient to justify a swearing back if the sketches, drawings or photos were lost, but their contents remembered.

As the Manual of Patent Examining Procedures points out in paragraph 715.07, even a verbal disclosure sufficiently clear to indicate definite conception of the invention may be made by witnesses.

Applicant would further point out to the Examiner that in the paragraph entitled "Establishment of Dates", set forth in Section 715.07 of the Manual of Patent Examining Procedures recites that the dates may be removed or blocked off in which case the matter of dates can be taken care of in the body of the oath of declaration as Applicant has elected. In fact, it is rather common place for the dates to be removed from drawings, photographs and other such exhibits to not unnecessarily disclose the earliest date of use in the event that an interference proceeding arises. Applicant is again enclosing an Affidavit Under the provisions of 35 USC 131 which swears behind the Berry Patent '707B1 and removes it as an effective reference in the rejection of Applicant's claims.

#### THE REJECTION

In any event, it is respectfully submitted that the claims, as now amended, clearly distinguish over the prior art references. All of the remarks submitted in the previous amendment filed on January 5, 2004 are incorporated herein as though fully set forth herein word for word.

Additionally, in the prior art tree blinds, such as illustrated in the Berry '707 B1 patent, the platforms are extremely large and unnecessarily bulky to be readily portable to the woods. Applicant's stand is compact, light weight and easily portable. Applicant's tree stand has a platform which basically comprises an endless frame that defines an opening in which the doors only are swingably mounted on the endless frame. There is no other support structure disposed in the endless frame opening of Applicants' invention.

In the Berry Patent No. '707 B1, the frame 12A includes a plurality of cross frame members 12B disposed forwardly and rearwardly of the door 32. This flooring frame bars 12B add substantial weight and bulk which precludes the ease of use and transportability. Applicant's door frame is basically the total frame of the platform.

Claim 1, for example, recites a tree stand comprising a platform for support of an individual including a perimetrically extending platform frame defining a horizontally outermost platform perimeter and a vertical access opening therethrough for allowing the vertical passage of an individual therethrough between a position underlying the platform frame in a position overlying the platform frame and a pair of closure doors, and means articulately mounting said closure doors on said perimetrically extending frame adjacent the opening for movement between closed positions of the door adjacent each other and generally lying in the same plane to close said opening and provide a support for an individual underlying said platform frame.

Claim 16 similarly recites a tree stand comprising a horizontal, endless platform frame including a vertical opening therethrough...means for detachably coupling said endless platform frame to a vertical support; first and second oppositely swingable closure means for selectively completely spanning said frame and closing said opening to provide a floor on which a person passing through the opening can stand.

Claim 17 similarly recites the combination of a generally horizontal endless platform frame, a pair of elongate doors having opposite end portions spanned by laterally inner and outer edge portions, means articulately mounting said doors to said platform frame for

swinging movement between closed positions spanning said frame, lying in the same plane, and completely closing said opening in open positions transverse to said plane...

Claim 20 likewise recites the combination of an elevated platform, means for supporting said platform on a vertical support, said platform having an endless frame including a front end frame, a rear end frame, and laterally opposed side frames spanning said front and rear frame ends,...and means for articulately coupling said closure doors to said platform frame for swinging movement in opposite directions between coplanar closed positions, completely spanning said frame and closing said vertical access opening, and transversely disposed open positions including pivot means articulately coupling said doors to said platform frames.

It is respectfully submitted that in the Berry patent, the access door 32 does not completely span the opening defined by the endless frame member 12A and the frame 12A does not define the access opening through which the user can pass. The door 32 does not completely close the opening defined by the frame 12A but only a small portion thereof. The door 32 is not mounted on the frame 12A but rather is pivoted on one of the cross frame members 12B. This prior art construction substantially adds to the bulk of the frame and eliminates it as an easily transportable unit. Heretofore, tree stands have been provided with a fixed sub-frame, i.e., crossbars 12b, disposed within the main frame on which the user can stand when closing the doors and after passing upwardly through the opening.

It is respectfully submitted that there is no prior art tree stand which discloses or remotely suggests the concept of a tree stand wherein the swingable doors basically comprise the total platform support and not just an opening in an existing platform.

With regard to the Potts Patent No. 766,061, as previously mentioned, Potts discloses a non-analogous cellar door and does not disclose or remotely suggest the concept of a tree stand wherein the access doors comprise the floor. It is respectfully submitted that the Potts patent is not related to devices which are easily portable much less a platform in a tree stand.

It is respectfully submitted that it would not be obvious to use the double cellar door structure of Potts to modify Berry because Berry did not appreciate the problem nor the concept of having the swingable doors comprising the total platform support.

It is respectfully submitted that if one were to modify the Berry patent in accordance with the exposure of Potts, the Berry construction would be a solid heavy door which would teach away from the concept of a light weight portable tree stand. Moreover, it is respectfully submitted that if one were to suggest modifying the Potts construction in accordance with the teaching of the Berry patent, one would not modify the cellar doors to make the cellar doors of Potts a latticework having a plurality of cross strips forming a pattern of open spaces. Such a modification of the Potts patent would render it useless for protection of a cellar from the elements and egress and ingress of various animals, rodents, etc. Accordingly, such a proposed modification cannot be made.

Claim 2 further goes on to recite that a pair of latticework closure doors having a plurality of cross strips forming a pattern of open spaces. Claims 16 and 17 likewise

recite the latticework closure means and latticework doors respectively. If one were to modify the Berry patent by the structure disclosed in Potts, the doors of Berry would be solid, closed doors which would basically render the Berry structure unuseable. It is respectfully submitted that such a proposed modification is untenable.

Moreover, newly added claim 27 additionally recites that the means for mounting said platform on an upstanding support comprises a rearwardly extending flange mounted on, and extending rearwardly of, said rearward end portion of sufficient size and strength to support a person standing thereon. Neither the Berry nor the Potts patents disclose or remotely suggest this construction. The Berry patent only discloses "cutouts 88" which are cut out or stamped out of the side rails 60 and are not of sufficient size nor strength to support an individual standing thereon. It is respectfully submitted that to modify the Potts construction to include the latticework door would be contrary to the very purpose for which the solid Potts doors is provided, i.e, to provide security.

Moreover, Potts does not disclose or remotely suggest the concept of a pair of doors having separate individual endless frames spanned by latticework. Accordingly, even if the Berry patent were modified in accordance with the teachings of the Potts patent, the resultant claim construction would not be anticipated.

If the Berry construction was modified in accordance with the teachings of the Potts patent, the door would be solid which would add undue weight, would be slippery and would be impractical. Accordingly, any suggestion of modifying the Berry patent in accordance with the Potts construction, is untenable.

It is respectfully submitted that any proposed modification of the Berry construction with the Potts construction in an attempt to meet the recitations in Applicant's claim is not obvious since no useful purpose would be served thereby. In Applicant's construction, the user can stand on the rearwardly extending flange to position themselves until the doors are closed.

Applicant has thus provided a new and novel lightweight construction whereby the doors comprise the total floor and not just a partial floor as disclosed in the Berry patent as well as the other patents previously cited.

With the added floor frame surrounding the access opening, the prior art tree stands are basically ineffective because they are too difficult to tote.

Applicant has thus disclosed and claimed new and novel structure cooperating in a new and novel manner to produce a new and novel result not taught or remotely suggested in the art of record.

The allowance of claim 6 is appreciated, however, it has not been amended to independent form as it is now believed to depend from an allowable claim.

It is respectfully submitted that since all of the claims, upon reconsideration, now remaining in the case are respectfully submitted to be in obvious condition for allowance, an early Notice of Allowance is earnestly solicited.

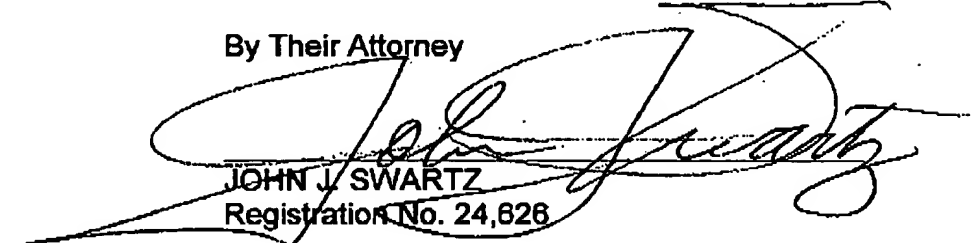
In the event the Examiner is still of the opinion that some of the claims are still not allowable, the Examiner is respectfully requested to call Applicant's attorney for a telephone interview or an in-person interview.

Further and favorable action is earnestly solicited. Please charge the \$54 to cover the claim fee for the additional six claims, plus any additional fees, to our deposit account no. 502553.

Respectfully submitted,

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By Their Attorney



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